

in a letter dated March 9, 1995 for not notifying the respondent the reason for being absent from work.

Claimant did not receive any medical treatment for his alleged injuries until August 8, 1995. He had contacted Dr. Steven Quade, a chiropractor in Overland Park, Kansas, on March 1, 1995 but did not receive treatment from him at that time. Claimant did receive unemployment compensation from June of 1995 through the middle of October 1995. Claimant admitted that he had not asked respondent to provide medical treatment. Respondent introduced into evidence six letters from claimant complaining of problems related to his termination; none of the letters mentioned a work-related injury or requested medical treatment.

Troy Malone, claimant's supervisor, testified and denied that claimant had notified him that he had been injured when he was carrying the crate on January 29, 1995. Mr. Malone also testified that claimant had left a message on his voice mail on January 30, 1995, but that message had indicated that the claimant had a tension headache and was going to try to come into work at a later time. Mr. Malone established that claimant was terminated because he was absent from work from February 29, 1995 through March 7, 1995 without notifying respondent as to the reason for the absence. Mr. Malone testified the first he knew claimant was making a claim for a work-related injury was when he attended the unemployment hearing involving the claimant on August 3, 1995.

In this case, both the claimant and the respondent's representative, Troy Malone, claimant's supervisor, testified in person before the Administrative Law Judge. Thus, the Administrative Law Judge had the opportunity to personally assess the credibility of both of the witnesses. The Administrative Law Judge denied claimant's request for preliminary benefits finding the claimant failed to prove that he gave notice of his work-related accident of January 29, 1995 until August of 1995. K.S.A. 44-520 requires the claimant to give notice of an accident within 10 days or establish just cause within 75 days from the date of accident for not giving the 10-day notice. The Administrative Law Judge having found the notice of accident was not given until August of 1995, which is in excess of 75 days, denied claimant's claim for preliminary workers compensation benefits. The Appeals Board affirms the Administrative Law Judge's Order, deferring to the Administrative Law Judge as he was able to personally observe the credibility of the witnesses.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Alvin E. Witwer dated October 24, 1995, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of January 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: J. Burke Pollack, Tustin, CA
Bill W. Richerson, Kansas City, MO
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director